IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

REVIEW PETITION NO. 34 OF 2003
IN
WRIT PETITION NO. 1489 OF 1998

Fali Rustomji Kumana ... Petitioner

Versus

M.M. Bilaney & Anr. ... Respondents

Mr. F. D. Vitre with Mr S. Rustomji for Petitioner.

Mr. Mohan Pungaliya for Respondents.

CORAM : F.I. REBELLO,J.
DATED : NOVEMBER 23, 2005

P.C.

. This Review is directed against the order dated 25.3.2001 by which the submission made on behalf of the Petitioner was recorded and the petition was allowed to be withdrawn. It is submitted on behalf of the Petitioners that the Petition was allowed to be withdrawn in view of the finding recorded in their favour by this court in Writ Petition No. 1247 of 1997 which was passed on 23rd/29th March 2001. Aggrieved by the judgement of this court, the Petitioner preferred S.L.P. before the Apex Court where leave was granted and the appeal

numbered as C.A. No. 5162 of 2002. The appeal was allowed by Judgement dated 27th September, 2005.

. It is the case of the Petitioners that the appeal was allowed consequent to the findings that the review applicant herein was not tenant had not been disturbed by this court. It is submitted that the Petitioners did not pursue their petition in view of the judgment in their favour which became the subject matter of appeal before the Apex Court. The proceedings by them was based on the fact that the review applicant had become an independent tenant under the Landlord. The learned counsel has placed reliance on various judgments and also placed reliance in the judgement in the case of Board of Control for Cricket in India and Another Versus Netaji Cricket Club and Others, (2005) 4 S.C.C. 741 and more specifically paragraphs 87, 88, 89 and 90 to contend that the review in these circumstances would lie in this court in exercise of its review jurisdiction.

. When the appeal was before the Apex Court, the

review was pending before this court. The appeal has now been disposed of. The learned counsel points out that they have preferred review application before the Apex Court itself. Whatever may be the position, once the Apex Court has allowed the appeal and has recorded findings therein, it would not be appropriate for this court to exercise its review jurisdiction even assuming that the review application as filed herein is maintainable. With the aforesaid observations, review application disposed of.

(F.I. REBELLO,J.)